

Application No. 09/909,233
Amendment dated November 03, 2004
Amendment and Response to Office Action of May 3, 2004

REMARKS/ARGUMENT

Status Of The Claims

In this amendment, Claim 13 has been canceled without prejudice. Claims 1, 8, 43, and 44 have been amended to incorporate the language of Claim 13 and the specification, page 8, lines 9-17. The changes presented herewith, taken with the following remarks, are believed sufficient to place Claims 1-10, 12, 14-35, and 41-44 in condition for allowance.

Formal Matters

Applicant's request for continued examination under 37 CFR 1.114 has been entered. The rejection of Claims 1-10, 12-35, and 41-44 under the judicially created doctrine of obviousness-type double patenting over Claims 87-91 of 09/909288 has been withdrawn.

103(a) Rejections

It is basic patent law that the rejections of claims under 35 U.S.C. §103 must comport with the classic standard set forth in *Graham v. John Deere Company* 383 US 1, 148 USPQ 459 (1966); see also MPEP Section 706. The Supreme Court's guidance in that landmark case, requires that, to establish a *prima facie* case of obviousness, the USPTO must:

- (1) Set forth the differences in the claims over the applied references;
- (2) Set forth the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and
- (3) Explain why the proposed modification would have been obvious.

To satisfy Step (3), the Patent Office must identify where the prior art provides a motivating suggestion to make the modification proposed in Step (2). See *In re Jones*, 958 F2d 347, 21 USPQ 2d 1941 (Fed. Cir. 1992). The mere fact that the prior art may be modified as suggested by the Patent Office does not make the modification obvious unless the prior art suggests the desirability of the modification. See *In re Fritch* 922 F2d 1260, 23 USPQ 2d 1780 (Fed. Cir.1992).

1. Claims 1-8, 10, 12-29, 33-35, 41, and 42 are rejected by the Examiner under 35 U.S.C. 103(a) as allegedly defining obvious subject matter over Feng (US 5,929,007) (hereinafter "Feng") in view of Trinh et al. (U.S. Patent No. 6,194,362) (hereinafter "Trinh (1)").

As described on pages 4-7 of the Office Action, the Examiner asserts that it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing a solvent, an odor masking perfume, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable

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expectation of success due to the broad teachings of Feng in combination with the cleaning composition of Trinh (1). The Examiner asserts that the broad teachings of this combination would encompass compositions having the same physical parameters as recited by the instant claims. The Applicants respectfully disagree.

Claims 1 and 8, as amended, are commonly directed to hard surface cleaning compositions for removing cooked-, baked- or burnt-on acidic soils wherein the composition displays an advancing contact angle on a polymerised grease-coated glass substrate at 25°C of less than about 20° using the Wilhelmy Method. Claims 2-7, 10-29, 33-35, and 41-42 directly or ultimately depend upon Claim 1, as amended.

Unlike the Applicants disclosure, the Feng reference is silent on the surface tension and/or the advancing contact angle of their cleaning composition. The Applicants' teach that a cleaning composition is useful in treating vertical glass surfaces if the composition comprises a low liquid surface tension and a specific contact angle on polymerized grease-coated substrates. (For basis see specification, page 2, lines 10-12; see also page 8, lines 1-2). There is no basis in fact and/or technical reasoning to reasonably support a determination that the Feng composition has the same physical parameters or inherent characteristics of an advancing contact angle as set forth in Claim 1 and 8, as amended, such that it "necessarily flows from the teachings of the applied prior art" (emphasis added) See, e.g., *In re Robertson*, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999).

Although Feng teaches a composition comprising a pH of at least 12.5 (see Feng, col. 6, lines 54-59) for use on greasy soil deposits (Feng, col. 7, lines 44-45), there is no disclosure of cleaning these greasy soil deposits on vertical surfaces where a composition having a low liquid surface tension and/or a specific contact angle would be useful. Thus, there can be found no motivation in Feng to provide a composition that displays an advancing contact angle on a polymerised grease-coated glass substrate at 25°C of less than about 20° using the Wilhelmy Method.

Without such motivation, the concept of teaching or suggesting a composition with a low liquid surface tension and advancing contact angle does not flow from, and definitely does not "necessarily" flow from, the teachings of Feng according to *In re Robinson* (*supra*, page 9). Therefore, the Applicants submit that without motivation, there is no support for an obviousness rejection under § 103.

Trinh (1) fails to solve the deficiencies of Feng. It is interesting to point out that while the Trinh (1) reference is directed to glass cleaning compositions, it is not directed to hard surface cleaners with specific contact angles useful in removing cooked-, baked- or burnt-on "acidic" food

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soils on vertical surfaces. As a result, like Feng, Trinh (1) is also silent as cleaning compositions with low surface tensions and specific advancing contact angles, vertical surface cleaning methods, or the problem of the removal of cooked-on or baked-on acidic soils. Furthermore, it also cannot be properly construed from Trinh that a composition comprising an advancing contact angle in the presence of an acidic food soil "necessarily" flows from Trinh (1), as required by *In re Robertson* (*supra*, page 9). Since neither Feng nor Trinh (1) provide motivation, teach or suggest a composition with a specific advancing contact angle for treating cooked-, baked- or burnt-on acidic soils on vertical surfaces, therefore, the Feng reference in combination with the Trinh (1) fails to render Claims 1-8, 10, 12-29, 33-35, 41, and 42, as amended, obvious under §103 in accordance with *In re Fritch* (*supra*, page 8). Reconsideration and withdrawal of the rejection is requested.

2. **Claim 30 is rejected by the Examiner under 35 U.S.C. 103(a) as allegedly defining obvious subject matter over Feng in view of Trinh (1) as applied to Claims 1-8, 10-29, 33-35, 41, and 42 above, and further in view of Ofosu-Asante et al. (U.S. Pat. No. 5,739,092) (hereinafter "Ofosu-Asante").**

The Examiner asserts that the broad teachings of this combination would encompass compositions having the same physical parameters as recited by the instant claim. The Applicants respectfully disagree.

Claim 30 is directed to a hard surface cleaning composition for removing cooked-, baked- or burnt-on acidic soils wherein the composition comprises a reserve alkalinity of less than about 5 in the presence of an acidic food soil, and a salt having a divalent cation. Claim 30 is also dependent upon Claim 1, as amended. As described above, both Feng and Trinh (1) are silent as to teaching or suggesting cleaning compositions with low surface tensions and specific advancing contact angle, vertical surface cleaning methods, or the problem of the removal of cooked-on or baked-on acidic soils.

Ofosu-Asante fails to solve the deficiencies of both Feng and Trinh (1). The Ofosu-Asante reference is directed to a liquid or gel dishwashing detergent said to have good grease removal benefits. However, there is no teaching or suggestion in Ofosu-Asante that its detergent composition is used for removing cooked-, baked- or burnt-on acidic soils. Like Feng and Trinh (1), Ofosu-Asante is also silent on cleaning compositions with low surface tensions and specific advancing contact angle, vertical surface cleaning methods, or the problem of the removal of cooked-on or baked-on acidic soils. Thus, like, Feng, there is simply no motivation in Ofosu-Asante to provide a composition with a specific advancing contact angle for treating cooked-, baked- or burnt-on acidic soils on vertical surfaces.

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Since neither Feng, Trinh (1) nor Ofosu-Asante provide motivation, teach or suggest a composition with a specific advancing contact angle for treating cooked-, baked- or burnt-on acidic soils on vertical surfaces, the Feng reference in combination with Trinh (1) and/or Ofosu-Asante, fails to render Claim 30 obvious under §103 in accordance with *In re Fritch* (*supra*, page 8). Reconsideration and withdrawal of the rejection is requested.

3. Claims 31 and 32 are rejected by the Examiner under 35 U.S.C. 103(a) as allegedly defining obvious subject matter over Feng in view of Trinh (1) as applied to Claims 1-8, 10-29, 33-35, 41, and 42 above, and further in view of JP 8151597 (hereinafter "JP '597").

The Examiner asserts that the broad teachings of this combination would encompass compositions having the same physical parameters as recited by the instant claims. The Applicants respectfully disagree.

Claims 31 and 32 are directed to a hard surface cleaning composition for removing cooked-, baked- or burnt-on acidic soils wherein the composition comprises a reserve alkalinity of less than about 5 in the presence of an acidic food soil, and directly or ultimately depend upon Claim 1, as amended. Claim 31 additionally comprises a thickening system comprising synthetic smectite type clay thickening agent having an average platelet size of less than about 100 nm. According to Claim 32, the thickening system comprises a mixture of a synthetic smectite type clay-thickening agent having an average platelet size of less than about 100 nm and a natural gum.

As stated above, both Feng and Trinh (1) are silent as to teaching or suggesting cleaning compositions with low surface tensions and specific advancing contact angle, vertical surface cleaning methods, or the problem of the removal of cooked-on or baked-on acidic soils.

JP '597 fails to solve the deficiencies of both Feng and Trinh (1). The JP '597 reference is silent as to teaching or suggesting cleaning compositions with low surface tensions and specific advancing contact angle, vertical surface cleaning methods, or the problem of the removal of cooked-on or baked-on acidic soils. Furthermore, it also cannot be properly construed from JP '597 that a composition comprising an advancing contact angle in the presence of an acidic food soil "necessarily" flows from JP '597, as required by *In re Robertson* (*supra*, page 9).

Since the JP '597 reference does not teach, suggest, or provide motivation for providing a cleaning composition with a specific advancing contact angle, it cannot be properly construed that such a characteristic "necessarily" flows from JP '597, as required by *In re Robertson* (*supra*, page 9). As stated above, neither Feng, Trinh (1) nor JP '597 provide a motivation by teaching or suggesting a cleaning composition with a specific advancing contact angle. Therefore, the Feng reference in combination with the Trinh (1) or JP '597, fails to render Claims 31 and 32 obvious

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under §103 in accordance with *In re Fritch* (*supra*, page 8). Reconsideration and withdrawal of the rejection is requested.

4. **Claims 1-8, 10, 12-19, 22-29, 33-35, 41-44 are rejected by the Examiner under 35 U.S.C. 103(a) as allegedly defining obvious subject matter over Trinh (1).**

The Examiner asserts that the broad teachings of this combination would encompass compositions having the same physical parameters as recited by the instant claims. The Applicants respectfully disagree.

Claims 1, 8, 43 and 44 are either commonly directed to or refer to a cleaning composition for removing cooked-, baked- or burnt-on acidic soils wherein the composition displays an advancing contact angle on a polymerised grease-coated glass substrate at 25°C of less than about 20° using the Wilhelmy Method. Claims 2-7, 10, 12-19, 22-29, 33-35, and 41-42 ultimately depend upon Claim 1, as amended.

For the reasons stated above, Trinh (1) does not teach, suggest, nor provide a motivation for providing a cleaning composition for removing cooked-, baked- or burnt-on acidic soils wherein the composition displays an advancing contact angle, as presently claimed, Trinh (1) fails to render Claims 1-8, 10-29, 33-35, and 41-44 obvious under §103 in accordance with *In re Fritch* (*supra*, page 8). Reconsideration and withdrawal of the rejection is requested.

5. **Claim 9 is rejected by the Examiner under 35 U.S.C. 103(a) as allegedly defining obvious subject matter over Trinh (1) or Trinh (1) as applied to the rejected claims above, and further in view of Trinh et al. (U.S. Pat. No. 6,001,789) (hereinafter "Trinh (2)").**

The Examiner asserts that the broad teachings of this combination would encompass compositions having the same physical parameters as recited by the instant claims. The Applicants respectfully disagree.

Claim 9 is directed to a hard surface cleaning composition for removing cooked-, baked- or burnt-on acidic soils wherein the composition comprises a specific contact angle, a reserve alkalinity of less than about 5 in the presence of an acidic food soil, and a cyclodextrin malodor-control agent.

Trinh (2) fails to solve the deficiencies of Trinh (1). Like Trinh (1), Trinh (2) is also silent on the surface tension and/or the advancing contact angle of their cleaning composition. Furthermore, the Trinh (2) reference does not teach or suggest cleaning compositions with low surface tensions and specific advancing contact angle, vertical surface cleaning methods, or the problem of the removal of cooked-on or baked-on acidic soils.

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Since neither the Trinh (1) nor the Trinh (2) reference teach or suggest a cleaning composition for removing cooked-, baked- or burnt-on acidic soils wherein the composition displays an advancing contact angle, it cannot be properly construed that such a characteristic "*necessarily*" flows from Trinh (1) in combination with the teachings of Trinh (2), as required by *In re Robertson* (*supra*, page 9). In addition, since neither Trinh (1) nor Trinh (2) provide a motivation for providing cleaning composition for removing cooked-, baked- or burnt-on acidic soils wherein the composition displays an advancing contact angle, as presently claimed, the Trinh (1) reference alone, or in combination with Trinh (2), fails to render Claim 9 obvious under §103 in accordance with *In re Fritch* (*supra*, page 8). Reconsideration and withdrawal of the rejection is requested.

CONCLUSION

It is believed that the above represents a complete response to the rejections under 35 U.S.C. § 103(a), and places the pending claims in better condition for consideration under appeal. Reconsideration and an early allowance are requested.

Respectfully submitted,

For: **Peter Robert Foley et al.**

By 

Kevin L. Waugh
Attorney/Agent for Applicants
Registration No. 47,206
Tele. No.: (513) 627-7386

November 3, 2004
Customer No.: 27752
(CM 2505 Amendment 11-03-04.doc)